

REMARKS

The Office Action and the cited and applied references have been carefully reviewed. No claim is allowed. Claims 1 and 4-10 presently appear in this application and define patentable subject matter warranting their allowance. Reconsideration and allowance are hereby respectfully solicited.

Page 28, line 23 of the specification is being amended to correct a typographical error. "SEQ ID NO:5" at page 28, line 23 should correctly read "SEQ ID NO:4". The present specification discloses at page 28, lines 19-22, that a sequence of 32 nucleotides (SEQ ID NO:20) is inserted between nucleotides +120 and +121 of the 5'-UTR in pCold08NC2 (the nucleotide sequence of the 5'-UTR in pCold08NC2 is the 144 nucleotide sequence of SEQ ID NO:5). Therefore, the nucleotide sequence of 5'-UTR of the resultant pCold08s32 construct is the $144+32=176$ nucleotide sequence of SEQ ID NO:4 as would be clear and readily recognized by those of ordinary skill in the art. Accordingly, no new matter is introduced into the application by this amendment to the specification.

Claims 1, 2 and 6-10 have been rejected under 35 U.S.C. §102(b) as being taught by Yamanaka et al., *J. Bacteriol.* (1999). This rejection is obviated by the amendment to claim 1 to incorporate the features of claims 2 and 3. As claim 3 was only objected as being dependent upon a rejected base claim but would

Appln. No. 10/538,793
Amd. dated January 3, 2007
Reply to Office Action of October 11, 2006

be allowable if rewritten in independent form, claim 1 and claims dependent therefrom which incorporate the features of claim 3 are now allowable.

Reconsideration and withdrawal of the rejection are therefore respectfully requested.

Claims 1, 2, 4 and 6-10 have been rejected under 35 U.S.C. §102(e) as being taught by Inouye et al., U.S. Patent 6,610,533. This rejection is also obviated by incorporating the features of claims 2 and 3 into claim 1, which is equivalent to rewriting claim 3 in independent form to include all the limitations of base claim 3 and intervening claim 2.

In view of the above, the claims comply with 35 U.S.C. §112 and define patentable subject matter warranting their allowance. Favorable consideration and early allowance are earnestly urged.

Respectfully submitted,

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